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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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APR 23 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of the Commission's Rules)
To Permit Flexible Service Offerings)
in the Commercial Mobile Radio Services)

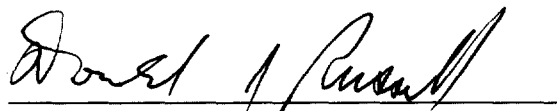
WT Docket No. 96-6

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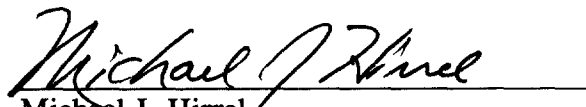
**MOTION FOR LEAVE TO
FILE COMMENTS OUT OF TIME**

The United States Department of Justice hereby requests leave to file the accompanying Comments in the above captioned proceeding out of time. Although circumstances prevented the Department from submitting these Comments by the Commission's deadline, we believe that the Comments may prove useful to the Commission.

Respectfully submitted,



Donald J. Russell
Chief
Telecommunications Task Force



Michael J. Hirrel
Attorney

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**COMMENTS of the
UNITED STATES DEPARTMENT OF JUSTICE**

The United States Department of Justice submits the following comments in the above captioned proceeding. In the proceeding's Notice of Proposed Rulemaking, the Commission proposes to permit flexible use of the Commercial Mobile Radio Services for fixed services. Such flexibility, if adopted, will significantly affect competition in the telecommunications industry. As one of the Federal agencies responsible for enforcing the antitrust laws and promoting competition, the Department has participated in prior Commission proceedings involving the role of competition in telecommunications. Consistent with its comments in prior proceedings supporting flexible use of the spectrum,¹ the Department urges the Commission here to grant CMRS licensees greater flexibility to provide fixed services. The Department does not, however, take a position as to whether the Commission should preempt state entry and rate regulation of fixed services provided by CMRS licensees.²

¹ E.g. Comments of United States Department of Justice, Gen. Docket No. 90-314, Amendment of the Commission's Rules to Establish New Personal Communications Services, filed November 9, 1992.

² The Commission asks in its NPRM whether it should designate expanded fixed service by CMRS licensees to be CMRS. The alternative, we assume, would be simply to (footnote continued next page . . .)

As the Commission observes in its NPRM, Commercial Mobile Radio Service licensees are now authorized to provide fixed services on an ancillary, auxiliary, or incidental basis. But there is some uncertainty about the scope of this authorization. The Commission's rules are unclear, for example, whether a CMRS licensee could provide principally fixed service within any particular geographic area. This uncertainty about the scope of the FCC's rules apparently has engendered some reluctance by licensees to provide fixed services. To the extent fixed service has been inhibited, as the Commission notes in its NPRM, the rules conflict with the Commission's own, and Federal antitrust, policies to promote competition. Without the rules' current inhibitions, as the Commission notes for example, CMRS might be used to compete more directly with local exchange service provided by incumbent wireline telephone companies.

* * * * *

The Commission proposes to clarify its rules to confirm that CMRS licensees may use their facilities to provide fixed wireless local loop service, and other forms of fixed service, without regard to whether those services are provided on an ancillary, auxiliary or incidental basis. The Department wholeheartedly endorses this proposal. The rules are now unclear as to the extent such service may be provided over CMRS facilities. This lack of clarity may

(. . . footnote 2 continued from previous page)

give CMRS licensees the right to use their spectrum and facilities for such service, without designating the service to be CMRS. Designating fixed service to be CMRS would have the effect of preempting entry and rate regulation by the states. See 47 U.S.C. § 332(c)(3)(A).

discourage CMRS licensees from providing fixed services. When it does, the public interest is adversely affected.

Clear flexibility to provide fixed services will allow CMRS licensees to respond more efficiently to market signals such as demand and cost of service. This ability will promote more efficient use of the scarce spectrum because licensees, under pressures from competitors, will seek to provide the services that consumers value most highly at the lowest possible cost. The mix of fixed and mobile wireless services provided will, as a result, be determined not by artificial regulatory structures, but by the marketplace. As service demands and costs change over time, moreover, regulatory flexibility will permit CMRS licensees to respond efficiently to those changing conditions.

Flexibility in the CMRS to provide fixed local loop services, in particular, could secure another important advantage. Competition in the market for local loop services is, as the Commission notes in its NPRM, a longstanding objective of both the Commission and the states. This objective is now also reflected in the nation's laws as well, as part of the new Telecommunications Act. But wireline local loop competition is only at an incipient stage. Fixed use of wireless CMRS service represents a potential additional source of local loop competition. In less densely populated areas, moreover, wireless local loop service may prove to be a relatively more attractive medium than wireline for potential competitors. Flexibility to provide such service in these areas may thus produce local loop competition that might not otherwise come about.

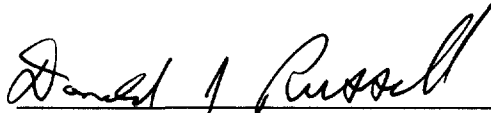
For the foregoing reasons, the Department supports the Commission's proposal to allow CMRS licensees to use their licenses and facilities without limitation to provide fixed services.


Respectfully submitted,

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